

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Phillip D. Reyes,)	
)	
Petitioner,)	C.A. No.: 8:05-3204-MBS
)	
vs.)	OPINION AND ORDER
)	
Warden Larry Powers, Spartanburg)	
County Detention Center,)	
)	
Respondents.)	
_____)	

Petitioner Phillip D. Reyes is a pretrial detainee currently housed at the Spartanburg County Detention Center. Petitioner, proceeding pro se, brings this action pursuant to 28 U.S.C. § 1361 and/or § 1651 for a writ of mandamus. Petitioner requests the court to dismiss what he claims are false charges brought against him. This is his second petition seeking such relief. See Reyes v. Spartanburg Co. Detention Center, C/A No. 8:05-1807-MBS.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On November 18, 2005, the Magistrate Judge filed a Report and Recommendation in which she recommended a finding that the within action be summarily dismissed without prejudice and without issuance of service of process. She further recommended that the dismissal be deemed a “strike” pursuant to 28 U.S.C. § 1915(e)(2) and (g). Petitioner filed no objections to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with

this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, the court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. For the reasons stated, case is dismissed *without prejudice* and without issuance and service of process. The dismissal of this case shall be deemed a “strike” pursuant to 28 U.S.C. § 1915(e)(2) and (g).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

December 16, 2005

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.